

## **REMARKS**

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

### **Status of the Claims**

Claims 1-3, 17, 23-25, 27, 32, 36, 38-40, and 46 are currently being amended. New Claims 49-51 have been added. After amending the claims as set forth above, Claims 1-51 are now pending in this application.

### **Interview Summary**

On October 19, 2004, Examiner Kovács and the undersigned conducted an interview to discuss the basis for the Examiner's rejections. Independent Claims 1, 17, 23, 24, 25, 32, 36, 45, 46, and 47 were discussed during the interview. No agreement was reached with respect to the claims.

The undersigned argued that the Office Action did not provide a basis for the rejection of each of the claims. The undersigned also argued that none of the cited references included each limitation of each particular claim. In particular, the undersigned argued that none of the cited references disclosed a flexible portion or flexible material as those terms were used in the specification and claims. The undersigned also argued that none of the cited references disclosed a compressible portion or compressible material as those terms were used in the specification and claims.

To assist the undersigned with his Reply to the Office Action, the Examiner indicated that he would provide a detailed Interview Summary that set forth more clearly the basis for the rejection of the claims. Applicants thank the Examiner for the detailed Interview Summary and for expanding on the basis of his rejections.

### **Reply to Interview Summary**

In the Interview Summary, the Examiner stated that "Applicant expressed that two types of claims exist in the application (or groups of claims), one related to an 'appliance' and

the other to an 'accessory.'" The undersigned wishes to clarify that he also expressed that a third type of claim, one related to a "method for equipping and operating a powered appliance," was also present.

The Examiner also stated in the Interview Summary that "Applicant expressed that for example claim 17 is a subcombination claim, therefore it is not a combination with the powered appliance as recited; Examiner found that similarity that subcombination is present in claims 24, 45, 46 & 47; Applicant's statement & confirmation of this finding is requested in a reply to this Interview Summary." Applicants hereby confirm that Claims 17, 24, 45, 46, and 47 are not intended to be directed to a powered appliance, but rather are intended to be directed to an accessory for use with a powered appliance.

In the Interview Summary, the Examiner also stated the following:

Examiner evaluating Applicant's statements during the interview, in re what is meant by "flexible" and by "compressible" as set forth to be used in interpreting these words, on page 7, ln 3-8 & 8-14, came to the conclusion that there are two species of material used for the handle, and in the case of the "accessory" claims, the accessory is either "flexible" or "compressible" type; therefore restriction requirement is present, and an election between the two species can be made either in response to this Interview Summary, or will be requested over the phone or writing prior to the next office action;

Applicants wish to clarify the Examiner's understanding of the "accessory" claims. The Examiner indicates that he understands that in the case of the "accessory" claims, the accessory is either of the "flexible" or "compressible" type. However, this understanding is contrary to what the undersigned expressed during the interview. In particular, the undersigned stated that an accessory falling under the scope of any of the accessory claims does not have to be either of the "flexible type" or the "compressible type," but rather the accessory may be both. In other words, an accessory may be both of the "flexible type" and the "compressible type." However, an accessory does not necessarily have to be both of the "flexible type" and the "compressible type."

MPEP § 806.04(f) states the following:

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

Because any particular accessory could (but does not necessarily) fall within the scope of what the Examiner characterizes as “the claims dealing with the ‘flexible’ species” as well as “the claims dealing with the ‘compressible’ species,” the restriction between the two types of claims is improper. Accordingly, Applicants respectfully request that the Examiner reconsider the restriction requirement.

Because Applicants believe that the restriction requirement is improper and would like to give the Examiner a chance to reconsider the restriction requirement, Applicants will not make an election in response to the Interview Summary, but instead will make the election (as the Interview Summary indicates is permissible) when requested to do so over the phone or in writing prior to the next Office Action.

**Claim Rejections – 35 U.S.C. § 102(b)**

In Section 3 of the Office Action, the Examiner rejected Claims 1-48 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,784,868 (“Wadzinski et al.”), U.S. Patent No. Des. 295,865 (“Rosenblad”), and U.S. Patent No. 4,362,228 (“Plamper et al.”). With respect to Wadzinski et al., the Examiner merely drew an arrow to cross member 22 illustrated in Figure 2 and indicated that it was a “[f]lexible portion partially receiving the handle bar.” The Examiner also included, without further explanation, a citation to col. 3, lines 44-67, col. 4, lines 1-7.” With respect to Rosenblad, the Examiner merely drew a line to a portion of the handle and stated that “[t]his is opposite of the Wadzinski, herein the handle has the flexible receiving portion.” With respect to Plamper et al., the Examiner merely drew

an arrow to cross-arm 22B illustrated in Figure 2 and stated that “[s]imilar to Wadzinski the control consist of the flexible receiving portion.”

In the Interview Summary, the Examiner stated that “[i]n the interest of expediting Applicant’s response, and in view of Wadzinski et al. being a stronger reference than Rosenblad (DES 295865) and Plamper et al (4362228), therefore these two references are no longer used for rejecting claims 1-48.” In light of the Examiner’s comment in the Interview Summary, the following discussion addresses only the Wadzinski et al. reference.

Wadzinski et al. discloses, in relevant part, the following:

Control system 2 includes a pivotal deadman's control in the form of a U-shaped bail 20 that is pivotally carried on the upper end of handle assembly 4. Bail 20 includes a transversely extending cross member 22 and spaced downwardly extending legs 24. Each bail leg 24 has an outwardly turned lower end 26 that serves as a pivot shaft for bail 20. Each lower end 26 of each leg 24 of bail 20 is pivotally received in a hole 28 on the adjacent handle tube 8. See FIG. 9.

Overall, bail 20 has a shape that is very similar to the shape of the upper portion of handle assembly 4. For example, *when bail 20 is pivoted flat to lie against handle assembly 4, the transverse cross member 22 of bail 20 will lie adjacent the cross tube 10 of handle assembly 4 so that the operator's hands can grip both bail 20 and handle assembly 4 at the same time.*

Bail 20 is normally maintained in a blade disengaged position as shown in solid lines in FIGS. 1 and 2 in which the transverse cross member 22 of bail 20 is spaced forwardly in front of cross tube 10 of handle assembly 4. When it is desired to obtain blade rotation, bail 20 has to be pivoted out of this blade disengaged position and into a blade engaged position *in which bail 20 has been pivoted flat against handle assembly 4 and cross member 22 of bail 20 lies adjacent cross tube 10 of handle assembly 4.* Thus, referring to FIG. 1, to obtain blade rotation, the operator has to pivot bail 20 in a clockwise direction from the solid line position in the direction of the arrow A. This pivoting motion of bail 20 out of its blade disengaged position and towards its blade engaged position is the first action of the operator that is needed to obtain blade rotation.

Col. 3, line 44 – col. 4, line 7 (emphasis added). As explained below, Wadzinski et al. does not identically disclose the combination of elements recited in Claims 1-48.

Independent Claims 1 and 17

Independent Claim 1, as amended, recites a “powered appliance” including, among other elements, a handle and a control, “wherein at least one of the handle and the control includes a flexible material adjacent the other of the handle and the control, the flexible material being configured to deform under the normal amount of force the operator could continuously apply to the flexible material during the period of time the powered appliance would normally be used during one session.” Independent Claim 17, as amended, recites an “accessory” including, among other elements, a body “wherein the body includes a flexible portion adjacent the other of the handle and the control, the flexible portion being configured to deform under the normal amount of force the operator could continuously apply to the flexible portion during the period of time the accessory would normally be used during one session.” Wadzinski et al. does not identically disclose the combination of elements recited in independent Claims 1 and 17, as amended.

Wadzinski et al. does not disclose, teach, or suggest that cross-member 22 includes a “flexible member” or “flexible portion” as these term are used in Claims 1 and 17. Wadzinski et al. merely indicates that “when bail 20 is pivoted flat to lie against handle assembly 4, the transverse cross member 22 of bail 20 will lie adjacent the cross tube 10 of handle assembly 4 so that the operator's hands can grip both bail 20 and handle assembly 4 at the same time.” Col. 3, lines 59. This in no way indicates that cross member 22 of bail 20 includes a “flexible member” or “flexible portion” as recited in Claims 1 and 17, as amended.

In the Interview Summary, the Examiner stated that “as shown and explained above, in fig 2, 3, 4, 5, the material is flexible due to its shape, i.e. U-shaped, also it is further shown in fig 5 that portion of the control is made of a different material, which is not only flexible but also compressible; the material wrapping it is of flexible and compressible type, such as rubber or other polymeric type.”

There are at least two reasons the Examiner's statement does not support a rejection of independent Claims 1 and 17, as amended. First, Wadzinski et al. neither discusses the material of cross member 22, indicates that cross member 22 is flexible, nor otherwise indicates that any portion of cross member 22 is deformable under a normal amount of force an operator could continuously apply during the period of time the power equipment (of which cross member 22 is a part) would normally be used during one session. Second, the shape of a component cannot be equated with flexibility. While the shape of a component may affect flexibility, the mere fact that a component is "U-shaped" does not mean that it is flexible as that term is used in Claims 1 and 17, as amended.

For at least the reasons stated above, Wadzinski et al. does not identically disclose the combination of elements recited in independent Claims 1 and 17, as amended. Accordingly, independent Claims 1 and 17 (and corresponding dependent Claims 2-16 and Claims 18-22, respectively) are not anticipated by Wadzinski et al. under 35 U.S.C. § 102(b) and are patentable. Applicants respectfully request reconsideration and allowance of independent Claims 1 and 17, as amended, and corresponding dependent Claims 2-16 and 18-22.

#### Independent Claims 23 and 24

Independent Claim 23 recites a "powered appliance" including, among other elements, a handle and a control, "wherein at least one of the handle and the control includes a compressible material adjacent the other of the handle and the control, the compressible material being configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the compressible material during the period of time the powered appliance would normally be used during one session." Independent Claim 24 recites an "accessory" including, among other elements, a body "wherein the body includes a compressible portion adjacent the other of the handle and the control, the compressible portion being configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the compressible portion during the period of time the accessory would normally be used during one session." Wadzinski et al. does not identically the combination of elements recited in independent Claims 23 and 24, as amended.

Wadzinski et al. does not disclose, teach, or suggest that cross-member 22 includes a “compressible member” or “compressible portion” as these terms are used in Claims 23 and 24. Wadzinski et al. merely indicates that “when bail 20 is pivoted flat to lie against handle assembly 4, the transverse cross member 22 of bail 20 will lie adjacent the cross tube 10 of handle assembly 4 so that the operator's hands can grip both bail 20 and handle assembly 4 at the same time.” Col. 3, lines 59. This in no way indicates that cross member 22 of bail 20 includes a “compressible member” or a “compressible portion” as recited in independent Claims 23 and 24, as amended.

In the Interview Summary, the Examiner stated that “as demonstrated above all limitations recited in the claim are explained above, the difference is that now ‘a compressible material’ is recited instead of the ‘flexible material’; however, as explained in the last paragraph in re claim 1, the material is compressible.” The Examiner’s statements fail to support the rejection of independent Claims 23 and 24, as amended, for the same reasons set forth above in connection with independent Claims 1 and 17. Simply stated, Wadzinski et al. neither discusses the material of cross member 22, indicates that cross member 22 is compressible, nor otherwise indicates that any portion of cross member 22 is configured to compress so as to occupy a reduced volume under the normal amount of force an operator could continuously apply during the period of time the power equipment (of which cross member 22 is a part) would normally be used during one session.

For at least the reasons stated above, Wadzinski et al. does not identically disclose the combination of elements recited in independent Claims 23 and 24, as amended. Accordingly, independent Claims 23 and 24 are not anticipated by Wadzinski et al. under 35 U.S.C. § 102(b) and are patentable. Applicants respectfully request reconsideration and allowance of independent Claims 23 and 24, as amended.

#### Independent Claim 25

Independent Claim 25, as amended, recites a “method for equipping and operating a powered appliance” including, among other steps, the step of “providing a tube having a compressible outer surface . . . , the compressible outer surface being configured to compress

so as to occupy a reduced volume under the normal amount of force an operator of the powered appliance could continuously apply to the compressible outer surface during the period of time the powered appliance would normally be used during one session.” For the reasons stated above in connection with independent Claims 23 and 24, Wadzinski et al. does not identically disclose the combination of steps recited in independent Claim 25, as amended. In particular, Wadzinski et al. does not disclose a tube having a “compressible outer surface” as recited in independent Claim 25, as amended.

Accordingly, independent Claim 25, and corresponding dependent Claims 26-31, are not anticipated by Wadzinski et al. under 35 U.S.C. § 102(b) and are patentable. Applicants respectfully request reconsideration and allowance of independent Claim 25, as amended, and corresponding dependent Claims 26-31.

#### Independent Claim 32

Independent Claim 32 recites a “method for equipping and operating a powered appliance” including, among other steps, the step of “providing a flexible member configured to deform under the normal amount of force an operator of the powered appliance could continuously apply to the flexible member during the period of time the powered appliance would normally be used during one session.” For the reasons stated above in connection with independent Claims 1 and 17, Wadzinski et al. does not identically disclose the combination of steps recited in independent Claim 32, as amended. In particular, Wadzinski et al. does not disclose the step of providing a “flexible member” as recited in independent Claim 32, as amended.

Accordingly, independent Claim 32, and corresponding dependent Claims 33-35, are not anticipated by Wadzinski et al. under 35 U.S.C. § 102(b) and are patentable. Applicants respectfully request reconsideration and allowance of independent Claim 32, as amended, and corresponding dependent Claims 33-35.



Independent Claim 36

Independent Claim 36 recites a “method for equipping and operating a powered appliance” including, among other steps, the step of “providing a flexible member having a first end and a second opposite, the flexible member being configured to deform under the normal amount of force an operator of the powered appliance could continuously apply to the flexible member during the period of time the powered appliance would normally be used during one session.” For the reasons stated above in connection with independent Claims 1 and 17, Wadzinski et al. does not identically disclose the combination of steps recited in independent Claim 36, as amended. In particular, Wadzinski et al. does not disclose the step of providing a “flexible member” as recited in independent Claim 36, as amended.

Accordingly, independent Claim 36, and corresponding dependent Claims 37-44, are not anticipated by Wadzinski et al. under 35 U.S.C. § 102(b) and are patentable. Applicants respectfully request reconsideration and allowance of independent Claim 36, as amended, and corresponding dependent Claims 37-44.

Independent Claim 45

Independent Claim 45 recites an “accessory” including, among other elements, “a body configured to be coupled to one of the handle and the control, . . . wherein the body has a compressible outer surface and a high friction inner surface configured to prevent movement of the body relative to said one of the handle and the control when the body is coupled to said one of the handle and the control.” Wadzinski et al. does not identically disclose the combination of elements recited in independent Claim 45.

In the Interview Summary, the Examiner stated:

it is further pointed out, also see in re claim 23 & 25 above, that the compressible outer surface is inherent due to the design choice of the material being rubber or other polymeric type, while the inner surface due the nature of the material having inherent rougher surface and inherently not greased, it provides high friction inner surface for the body relative to one of the handle and the control when the body is coupled to the one of the handle and the control.

For the reasons stated above in connection with independent Claims 23 and 24, Wadzinski et al. does not disclose a “compressible outer surface” as recited in independent Claim 45. In addition to not disclosing a “compressible outer surface,” Wadzinski et al. also fails to disclose an accessory including a body having a “high friction inner surface.” The Examiner’s comment that the inner surface of cross member 22 of Wadzinski et al. provides a high friction inner surface “due the nature of the material having inherent rougher surface and inherently not greased” appears to be unsupported by Wadzinski et al. Wadzinski et al. is silent as to both the material from which cross member 22 is constructed and the inner surface characteristics of cross member 22.

For at least the reasons stated above, Wadzinski et al. does not identically disclose the combination of elements recited in independent Claim 45. Accordingly, independent Claim 45 is not anticipated by Wadzinski et al. under 35 U.S.C. § 102(b) and is patentable. Applicants respectfully request reconsideration and allowance of independent Claim 45.

#### Independent Claim 46

Independent Claim 46 recites an “accessory” including, among other elements, “a body configured to be coupled to one of the handle and the control, . . . wherein the body and the gap are sized so that at least half of the other of the handle and the control is received within the gap when the control is in the first position.” Wadzinski et al. does not identically disclose the combination of elements recited in independent Claim 46, as amended.

In the Interview Summary, the Examiner stated that “Applicants attention is directed especially to the explanation in re claim 25; and the gap in the upper U-shaped portion of the body is sized to substantially receive the other of the handle and the control.”

Wadzinski et al. states that “when bail 20 is pivoted flat to lie against handle assembly 4, the transverse cross member 22 of bail 20 will lie adjacent the cross tube 10 of handle assembly 4 so that the operator’s hands can grip both bail 20 and handle assembly 4 at the same time.” Col. 3, lines 55-59. As illustrated in Figures 5 and 6 of Wadzinski et al., when bail 20 is pivoted flat to lie against handle assembly 4, less than half of handle assembly 4 is

received within cross member 22, or what the Examiner refers to as “the gap in the upper U-shaped portion of the body.”

For at least the reasons stated above, Wadzinski et al. does not identically disclose the combination of elements recited in independent Claim 46, as amended. Accordingly, independent Claim 46 is not anticipated by Wadzinski et al. under 35 U.S.C. § 102(b) and is patentable. Applicants respectfully request reconsideration and allowance of independent Claim 46, as amended.

Independent Claim 47

Independent Claim 47 recites an “accessory” including, among other elements, “a body configured to be coupled to one of the handle and the control, . . . wherein the body includes a first end and a second opposite end and wherein the accessory further includes means for securing the first and second ends relative to one another about said one of the handle and the control in at least one direction.” Wadzinski et al. does not identically disclose the combination of elements recited in independent Claim 47.

In the Interview Summary, the Examiner directs Applicants’ attention to the explanation provided with regard to Claims 36, which states, in relevant part, “the securing the opposite ends of the flexible member about the handle or the control (at least) is as shown in fig 3 or 5.”

Neither Figure 3 nor Figure 5 discloses a “means for securing the first and second ends relative to one another about said one of the handle and the control” as recited in independent Claim 47. While cross member 22 may be somehow secured to bail 20, the two ends of cross member 22 do not appear to be secured relative to one another about bail 20.

For at least the reasons stated above, Wadzinski et al. does not identically disclose the combination of elements recited in independent Claim 47. Accordingly, independent Claim 47, and corresponding dependent Claim 48, are not anticipated by Wadzinski et al. under 35 U.S.C. § 102(b) and are patentable. Applicants respectfully request reconsideration and allowance of independent Claim 47 and corresponding dependent Claim 48.

**New Claims**

Applicants have added new Claims 49-51. New Claims 49-50 ultimately depend from independent Claim 23. New Claim 51 depends from independent Claim 24. New Claim 49 includes all the limitations of independent Claim 23 and further recites that the “compressible material is releasably coupled to the at least one of the handle and the control.” New Claim 50 includes all the limitations of independent Claim 23 and Claim 49 and further recites that the first and second ends of the compressible material “are sufficiently spaced from one another to form a gap therebetween, the gap between the first end and the second end being less than the diameter of the at least one of the handle and the control.” New Claim 51 includes all the limitations of independent Claim 24 and further recites that the “body is dimensioned such that the first and second ends [of the body] are sufficiently spaced from one another to form a gap therebetween when the body is coupled to said one of the handle and the control, the gap between the first and the second ends being less than the diameter of said one of the handle and the control.” None of the cited reference disclose, teach, or suggest the combination of elements recited in new Claims 49-51. Accordingly, Applicants respectfully request allowance of new Claims 49-51.

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Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to

Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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By 

FOLEY & LARDNER LLP  
Customer Number: 26371  
Telephone: (414) 297-5572  
Facsimile: (414) 297-4900

Mathew P. Anderson  
Attorney for Applicant  
Registration No. 54,589